

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	CRIMINAL ACTION NO.
v.)	2:18cr419-MHT
)	(WO)
MICHAEL BRANDON SMIRNOFF)	

OPINION AND ORDER

This case is before the court on defendant Michael Brandon Smirnoff's motion to continue the trial. For the reasons set forth below, the court finds that jury selection and trial, now set for March 13, 2019, should be continued pursuant to 18 U.S.C. § 3161(h)(7) to May 20, 2019.

While the granting of a trial continuance is left to the sound discretion of the trial judge, see *United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or

indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance "would be likely to . . . result in a miscarriage of justice," § 3161(h)(7)(B)(i), or "would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence, § 3161(h)(7)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the

interest of the public and defendant Smirnoff in a speedy trial. Smirnoff recently retained a new lawyer, who seeks additional time to review the discovery and possibly negotiate a plea before the trial date. Furthermore, counsel has a family vacation planned on March 14-22. Based on these representations, the court concludes that a continuance is warranted.

Accordingly, it is ORDERED as follows:

(1) Defendant Michael Brandon Smirnoff's motion to continue (doc. no. 38) is granted.

(2) The jury selection and trial for defendant Michael Brandon Smirnoff, now set for March 13, 2019, are continued to May 20, 2019, at 10:00 a.m., in the Frank M. Johnson Jr. United States Courthouse Complex, Courtroom 2FMJ, One Church Street, Montgomery, Alabama.

DONE, this the 28th day of February, 2019.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE